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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 HANNIBAL A-E.,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL SECURITY,

11 Defendant.

CASE NO. C20-1447-BAT

**ORDER REVERSING THE  
COMMISSIONER'S FINAL DECISION  
AND REMANDING FOR FURTHER  
PROCEEDINGS**

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13 Plaintiff appeals the ALJ's decision finding him not disabled. The ALJ found bipolar  
14 disorder with psychotic features, substance abuse, and tendonitis, bilateral knees are severe  
15 impairments; Plaintiff has the residual functional capacity (RFC) to perform light work with  
16 additional limitations; and Plaintiff cannot perform past relevant work but is not disabled  
17 because he can perform other jobs in the national economy. Tr. 12-27.

18 Plaintiff contends the ALJ misevaluated three medical opinions regarding his mental  
19 impairments and the Court should accordingly remand the case for further administrative  
20 proceedings. Dkt. 13. For the reasons below, the Court **REVERSES** the Commissioner's final  
21 decision and **REMANDS** the matter for further administrative proceedings under sentence four  
22 of 42 U.S.C. § 405(g).

1 **DISCUSSION**

2 The Court may set aside the Commissioner’s denial of Social Security benefits only if the  
3 ALJ’s decision is based on legal error or not supported by substantial evidence in the record as a  
4 whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017).

5 **A. Medical Opinions**

6 Plaintiff filed his disability claim in 2018. The regulations effective March 27, 2017, 20  
7 C.F.R. §§ 404.1520c(c), 416.920c(c), require the ALJ to articulate the persuasiveness of each  
8 medical opinion and to explain how the ALJ considered the supportability and consistency  
9 factors. 20 C.F.R. §§ 404.1520c(a), (b), 416.920c(a), (b). The ALJ must specifically account for  
10 the factors of supportability and consistency in addressing the persuasiveness of a medical  
11 opinion. Thus, the regulations require the ALJ to provide specific and legitimate reasons in  
12 giving weight to or in rejecting a doctor’s opinions. *See, e.g., Kathleen G. v. Comm’r of Soc.*  
13 *Sec.*, No. C20-461 RSM, 2020 WL 6581012, at \*3 (W.D. Wash. Nov. 10, 2020) (finding that the  
14 new regulations do not clearly supersede the “specific and legitimate” standard because the  
15 “specific and legitimate” standard refers not to how an *ALJ* should weigh or evaluate opinions,  
16 but rather the standard by which the *Court* evaluates whether the ALJ has reasonably articulated  
17 his or her consideration of the evidence).

18 Additionally, the ALJ’s analysis must be supported by substantial evidence. *See*  
19 Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 Fed. Reg. 5852 (January  
20 18, 2017) (“Courts reviewing claims under our current rules have focused more on whether we  
21 sufficiently articulated the weight we gave treating source opinions, rather than on whether  
22 substantial evidence supports our final decision ... [T]hese courts, in reviewing final agency  
23

1 decisions, are reweighing evidence instead of applying the substantial evidence standard of  
2 review, which is intended to be highly deferential standard to us.”).

3 Plaintiff challenges the ALJ's determinations regarding the opinions of three doctors  
4 which are discussed in turn.

5 ***1. David Widlan, Ph.D.***

6 Dr. Widlan examined Plaintiff in May 2018 and opined “[Plaintiff] suffers from  
7 Schizophrenia. The Mental Status Examination indicated adequate or moderate deficits in  
8 memory and concentration, with some deficits in social reasoning. He is cognitively able to  
9 accept simple instruction from a supervisor. Moderately complex tasks would likely cause him to  
10 derail. Regardless, he does not appear capable of persistence as he would become easily  
11 overwhelmed by basic social stressors due to paranoia.” Tr. 25. While finding “part of this  
12 medical opinion evidence persuasive,” the ALJ found “less persuasive the portion of Dr.  
13 Widlan’s opinion that the claimant is incapable of persistence.” *Id.*

14 The ALJ discounted Dr. Widlan’s opinion as inconsistent with “as discussed above, the  
15 claimant’s record – including his counseling record from October 2018 through May 2019 and  
16 his work toward attending law school – [that] suggest[s] that the claimant retained significant  
17 capacity to persist in tasks despite ongoing life stressors and difficult circumstances.” Tr. 25. In  
18 support, the ALJ cited to opinion of Dr. Leslie Postovoit (B5A/3) and to portions of the medical  
19 record. *Id.* Dr. Postovoit noted Plaintiff has schizophrenia spectrum disorder, a history of hearing  
20 voices, is homeless, has panic attacks, is at times paranoid, socially isolates at times, and has  
21 deficits in judgment. She noted, for instance, Plaintiff tried to buy a Mercedes in 2018 despite  
22 being unemployed and homeless. Tr. 90-91. Although the doctor stated Plaintiff “definitely has  
23 some unusual thoughts and experiences, she opined he could perform gainful work activity. Tr.

1 92. She rendered this opinion despite noting Plaintiff is moderately limited in his ability to  
2 interact with others, concentrate, persist and maintain pace and adapt or manage himself, Tr. 91;  
3 is moderately limited in his ability to carry out detailed instructions, maintain attention for  
4 extended periods, perform activities with a schedule including maintain attendance and  
5 punctuality, and complete a normal workday without interruptions and perform at a consistent  
6 pace. Tr. 92-93. The ALJ acknowledged Dr. Postovoit's two-part narrative explanation for her  
7 opinion: "Claimant will experience intermittent interruptions from psychological symptoms.  
8 Claimant is capable of remaining on task enough of the time in order to complete work  
9 assignments within an acceptable time frame." Tr. 24 (citing Tr. 93).

10 In many respects the opinions of Drs. Widlan and Postovoit are similar. Both recognize  
11 Plaintiff has severe mental illness, including hearing voices and paranoia. Both assessed Plaintiff  
12 as having a number of moderate functional limitations. The difference is the conclusions each  
13 doctor reached. Dr. Widlan opined Plaintiff's mental illness limited Plaintiff more than assessed  
14 by the ALJ. Dr. Postovoit on the other hand opined Plaintiff can work because he performed  
15 some work in the past despite his symptoms.

16 The ALJ found Dr. Postovoit's opinion should be given more weight and contradicts Dr.  
17 Widlan's opinion but failed to explain sufficiently why Dr. Postovoit's opinion is more  
18 supportable or consistent with the record. The ALJ found Plaintiff has not engaged in work  
19 activity since the onset date in 2018 and thus Plaintiff's past jobs are not grounds, as Dr.  
20 Postovoit found, to discount the severity of Plaintiff's mental health symptoms. Dr. Postovoit  
21 also noted Plaintiff's many moderate functional limitations but provides no explanation as to how  
22 or why Plaintiff can engage in substantial gainful work activity despite these limitations.  
23

1 Dr. Postovoit's narrative explanation for her opinion contains two separate limitations.  
2 The first—"Claimant will experience intermittent interruptions form psychological  
3 symptoms"—is inconsistent with Dr. Postovit's conclusion Plaintiff can perform gainful work.  
4 Further, the ALJ's RFC determination does not account for how Plaintiff **will** experience  
5 intermittent interruptions or provide a reasoned basis to reject the limitation. Additionally, the  
6 ALJ does not explain how the RFC accounts for the numerous moderate functional limitations  
7 Dr. Postovoit noted and instead the RFC determination indicates Plaintiff can cope with changes  
8 in work setting and can meet work expectations regarding attendance, production, work place  
9 behavior, focus and pace for two hour increments. The ALJ did not explicate the basis for this  
10 conclusion, and Dr. Postovoit did not venture the same opinion.

11 The Court also notes the vocational expert (VE) was not presented with a hypothetical  
12 question that included a limitation that Plaintiff can cope with changes in work setting and can  
13 meet expectations regarding attendance, production, work place behavior, focus and pace **for**  
14 **two hour increments** as set forth in the RFC. Thus, the VE testified that Plaintiff can perform  
15 certain jobs without taking into account all of the limitations contained in the RFC; the ALJ's  
16 step five determination is thus erroneous for this separate reason.

17 In addition to citing to Dr. Postovoit's opinion, the ALJ also cited to portions of the  
18 medical record the ALJ deemed contradicted Dr. Widlan's opinion. The ALJ cited to B2F/4  
19 which does not contain any information contradicting Dr. Widlan's opinion. The exhibit is part of  
20 a medical record noting Plaintiff is paranoid and has delusions, suffers from night-terrors, and  
21 seemed stable on February 22, 2108, which is before his onset date. The ALJ also cited to B3F4-  
22 5 which is Dr. Widlan's report, and thus not grounds to reject the same opinion. The ALJ further  
23 cited to B5F/6, 14-15,24-27, 29, and 45 which covers mental health treatment between October

1 2018 and May 2019. This series of records notes when Plaintiff was seen in October 2018 and  
2 April 2019, "Psychotic features including auditory hallucinations, delusions, and paranoid  
3 ideation were present during evaluation and past encounters." Tr. 322 and 324. Exhibit B5F/6 is  
4 a report recording Plaintiff's complaints about being fired, his plan to relocate to Saudi Arabia,  
5 and how he has auditory hallucinations and problems concentrating. Tr. 326. Exhibit B5/F14 is  
6 the beginning of a clinical summary that does not contain medical evidence contradicting Dr.  
7 Widlan's opinions and F15 indicates Plaintiff shows resilience in getting a BA and seeking  
8 admission to law school, but is Bipolar and meets criteria for engaging "in activities that have a  
9 high potential for painful consequences that cause clinically significant impairment in  
10 functioning," and that Plaintiff has "psychotic features including auditory hallucinations,  
11 delusions, and paranoid ideation [that] were present during evaluation and past encounters." Tr.  
12 335. This series of records tends to support rather than contradict Dr. Widlan's opinions.

13       Turning to B5F/24-27, 29, and 45, the records at 24-27 relate to the October 2018  
14 evaluation noted above in which auditory hallucinations, delusions, and paranoid ideation were  
15 present during evaluation. Page 24 indicates Plaintiff was cooperative though the evaluator noted  
16 he "required multiple instances of redirection," and had paranoid ideation. Tr. 344. Plaintiff was  
17 noted to have limited insight into the current status of his mental health, was anxious, had normal  
18 memory and concentration; Plaintiff indicated to the evaluator difficulty with concentration due  
19 to psychotic symptoms. Tr. 345. Page 27 summarizes the October 2018 intake, noting Plaintiff  
20 had delusions and paranoia, and talks nonstop expressing perplexity about his various challenges.  
21 Tr. 347. And lastly P. 45 is a report from May 2019 noting Plaintiff wants to go to law school,  
22 restore his rights to possess a gun and presented with calm behavior and normal speech and  
23 pleasant mood. Tr. 365.

1 Finally, the ALJ cited to records at B6F/4-5 and B7F/1, 3, and 5. *See* Tr. 25. The records  
2 at B6F appear to be emergency room records from March 2019 regarding Plaintiff's lower  
3 extremity and back problems. *See* Tr. 376. Page 4 and 5 do not address Plaintiff's mental health  
4 problems and do not contradict Dr. Widlan's opinions. The records at B7F/1, 3, and 5 likewise  
5 address Plaintiff's physical problems (knee and ankle pain) and thus do not contradict Dr.  
6 Widlan's opinions about Plaintiff's mental limitations.

7 In short, the ALJ erred in rejecting Dr. Widlan's opinions as inconsistent with Dr.  
8 Postovoit's opinion and with the medical record. Dr. Postovoit's opinion contains many of the  
9 same findings that Dr. Widlan made but the ALJ failed to provide any explanation for how or  
10 why those limitations result in the RFC that was assessed. To reject Dr. Widlan's opinion in  
11 favor of Dr. Postovoit's opinion required the ALJ to provide specific and legitimate reasons  
12 showing why Dr. Postovoit's opinion was more supportable and consistent with the record than  
13 Dr. Widlan's. The ALJ failed to do so in this regard.

14 The ALJ's reliance on the medical record to reject Dr. Whidlan's opinion is also  
15 unsupported. The ALJ correctly noted that at least on one day, Plaintiff appeared to calm with  
16 normal mood and behavior. But that occurrence is not representative of Plaintiff's record of long  
17 standing and serious mental health problems and symptoms which tends to support Dr.  
18 Whidlan's opinions. Additionally, the ALJ discounted Dr. Widlan's opinions because of  
19 Plaintiff's "work toward attending law school." Tr. 25. The record, however, does not support the  
20 conclusion that that "work" shows Plaintiff is more functional than Dr. Widlan assessed. While  
21 Plaintiff may aspire to attend law school there is nothing showing he engaged in the type of work  
22 indicative of higher functioning. Plaintiff's aspiration to attend law school is more akin to his  
23 expressed desire to move to Saudi Arabia, and his attempt to buy a Mercedes despite being

1 homeless and lacking gainful employment sufficient to afford the car. His aspirations or desires  
2 thus do not necessarily track with the reality of his mental condition and are ill-suited to measure  
3 his functionality.

4 The ALJ's error was harmful because it resulted in a RFC determination that failed to  
5 account for all assessed limitations. Further as noted above, the VE was given a hypothetical  
6 question that not only did not contain all assessed limitations but also failed to contain a  
7 limitation set forth in the RFC. The ALJ's step finding, which relied upon the VE's testimony, is  
8 thus erroneous.

9 **2. Leslie Postovoit, Ph.D. and Bruce Eather, Ph.D.**

10 Dr. Postovoit reviewed Plaintiff's records and opined Plaintiff "will experience  
11 intermittent interruptions from psychological symptoms," "is capable of remaining on task  
12 enough of the time in order to complete work assignments within an acceptable time frame,"  
13 "cannot work in direct service to the general public or in close/constant contact with coworkers  
14 due to ongoing paranoia," and "needs to work in an environment where his job duties are clearly  
15 outlined, but he is capable of making adjustments." Tr. 24. Dr. Eather, in affirming Dr. Irwin,  
16 reached the same conclusion. *Id.* The ALJ found these opinions "persuasive." *Id.*

17 The ALJ credited these opinions as "generally consistent with the claimant's longitudinal  
18 medical record, discussed above, suggesting that the constellation of his mental impairments  
19 resulted in a moderate – but not extreme – reduction in his cognitive, adaptive, and social  
20 functioning capacity." Tr. 24-25. While the ALJ may accept a reviewing doctor's opinion under  
21 the new regulations in fashioning the RFC, the ALJ must specifically account for the factors of  
22 supportability and consistency in addressing the persuasiveness of the opinion and explain how  
23 the opinion supports the RFC determination. As discussed above, the ALJ erred by failing to



1 explain how the numerous moderate limitations Dr. Postovoit assessed is consistent with the  
2 RFC determination in this case, or why Dr. Postovoit's opinions are in fact supportable. Further,  
3 to the extent the ALJ offered, without elaboration, citations to the record, the ALJ “cannot  
4 simply pick out a few isolated instances” of medical health that support her conclusion, but must  
5 consider those instances in the broader context “with an understanding of the patient’s overall  
6 well-being and the nature of [his] symptoms.” *Attmore v. Colvin*, 827 F.3d 872, 877 (9th Cir.  
7 2016). As noted above, the ALJ relied upon portions of the record that do not contradict Dr.  
8 Widlan's opinion that Plaintiff is more limited than the ALJ assessed. Hence the ALJ's finding  
9 Dr. Postovoit's opinion is supported by the longitudinal record fails.

10 In sum, the regulations applicable to this case require the ALJ to articulate the  
11 persuasiveness of each medical opinion and to explain how the ALJ considered the  
12 supportability and consistency factors in weighing the opinions. The ALJ failed to validly and  
13 specifically account for the legitimate factors of supportability and consistency and thus erred in  
14 giving more weight to Drs. Postovoit and Eather’s opinions, and then using their opinions to  
15 discount Dr. Whidlan's opinions. Additionally, the ALJ must not only weigh the medical  
16 evidence but must also explain how the RFC determination accurately includes the limitations  
17 assessed. The ALJ failed to explain how the RFC determination accounts for the many moderate  
18 limitations Dr. Postovoit noted in her opinion and her assessment that Plaintiff "will experience  
19 intermittent interruptions form psychological symptoms." The ALJ must accordingly on remand  
20 reassess the doctor's findings and make appropriate findings as noted above.

21 And finally, the VE was asked to provide an opinion about jobs Plaintiff could perform  
22 based upon a hypothetical question that did not include all limitations set forth in the RFC  
23

1 determination. The ALJ thus erred at step-five in relying on the VE's testimony in concluding  
2 there are jobs that Plaintiff can perform in the national economy.

3 **CONCLUSION**

4 For the foregoing reasons, The Court **REVERSES** Commissioner's final decision and  
5 **REMANDS** the case for further administrative proceedings under sentence four of 42 U.S.C. §  
6 405(g).

7 On remand, the ALJ shall reevaluate the opinions of Drs. Widlan, Postovoit and Eather,  
8 develop the record and redetermine the RFC as needed, and continue to the remaining steps as  
9 appropriate.

10 DATED this 19<sup>th</sup> day of May 2021.

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BRIAN A. TSUCHIDA  
United States Magistrate Judge